

**THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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GEORGE MARTINEZ,

Plaintiff,

-against-

TRIUMPH CONSTRUCTION CORP. and TOP SET  
TRUCKING, LLC,

Defendants.  
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Civil Action No. 1:21-cv-04137-JPO-  
SDA

Civil Action

**NOTICE OF MOTION**

**ORAL ARGUMENT REQUESTED**

**PLEASE TAKE NOTICE** that upon the accompanying Declaration of Brian L. Gardner executed on July 16, 2021 and the exhibit annexed thereto, the accompanying Memorandum of Law, and all prior pleadings and proceedings had herein, the undersigned, counsel for defendants Triumph Construction Corp. and Top Set Trucking, LLC (collectively, “Defendants”), will move this Court, before the Honorable J. Paul Oetken, in Courtroom 706 at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007, for the entry of an Order: (1) dismissing the complaint of plaintiff, George Martinez (“Plaintiff”), in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6); and (2) for any such other and further relied as the Court deems just and proper.

**DATED:** New York, New York  
July 16, 2021

**COLE SCHOTZ P.C.**  
*Attorneys for Defendants, Triumph  
Construction Corp. and Top Set Trucking  
LLC*

By: /s/ Brian L. Gardner

Brian L. Gardner  
Jed M. Weiss  
Elizabeth Carbone (*pro hac vice*  
application forthcoming)  
1325 Avenue of the Americas  
19<sup>th</sup> Floor  
New York, NY 10022-4728  
(212) 752-8000

**TO:** All Counsel of Record Via CM/ECF